

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert MARTUZA et al
Title: REPLICATION-COMPETENT
HERPES SIMPLEX VIRUS
MEDIATES DESTRUCTION OF
NEOPLASTIC CELLS
Appl. No.: 10/748,233
Filing Date: 12/31/2003
Examiner: Wu Cheng Winston SHEN
Art Unit: 1632
Confirmation Number: 7116

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AMENDMENT TRANSMITTAL

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Transmitted herewith in connection with the above-identified application are the following:

- [X] Amendment and Reply Under 37 CFR 1.116 (3 pages);
- [X] Supplemental Application Data Sheet (4 pages);
- [X] Terminal Disclaimer (3 pages); and
- [X] Exhibit A (3 pages).

☒ Small Entity status under 37 C.F.R. § 1.9 and § 1.27 has been established by a previous assertion of Small Entity status.

☐ Assertion of Small Entity status is enclosed.

☒ The fee required for additional claims is calculated below:

	Claims As Amended		Previously Paid For		Extra Claims Present		Rate		Additional Claims Fee
Total Claims:	12	-	20	=	0	x	\$50.00	=	\$0.00
Independent Claims:	1	-	3	=	0	x	\$200.00	=	\$0.00
First presentation of any Multiple Dependent Claims:						+	\$360.00	=	\$0.00
CLAIMS FEE TOTAL									\$0.00

☐ Applicant hereby petitions for an extension of time under 37 C.F.R. §1.136(a) for the total number of months checked below:

<input type="checkbox"/> Extension for response filed within the first month:	\$120.00	\$0.00
<input type="checkbox"/> Extension for response filed within the second month:	\$450.00	\$0.00
<input type="checkbox"/> Extension for response filed within the third month:	\$1,020.00	\$0.00
<input type="checkbox"/> Extension for response filed within the fourth month:	\$1,590.00	\$0.00
<input type="checkbox"/> Extension for response filed within the fifth month:	\$2,160.00	\$0.00
EXTENSION FEE TOTAL:		\$0.00
<input checked="" type="checkbox"/> Statutory Disclaimer Fee under 37 C.F.R. 1.20(d):	\$130.00	\$130.00
CLAIMS, EXTENSION AND DISCLAIMER FEE TOTAL:		\$130.00
<input checked="" type="checkbox"/> Small Entity Fees Apply (subtract ½ of above):		\$65.00
Extension Fees Previously Paid:		\$0.00
TOTAL FEE:		\$65.00

The above-identified fees of \$65.00 are being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date 3 July 2007

By S. A. Bent

FOLEY & LARDNER LLP
Customer Number: 22428
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Stephen A. Bent
Attorney for Applicant
Registration No. 29,768

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert MARTUZA *et al.*

Title: REPLICATION-COMPETENT HERPES SIMPLEX VIRUS
MEDIATES DESTRUCTION OF NEOPLASTIC CELLS

Appl. No.: 10/748,233

Filing Date: 12/31/2003

Examiner: Wu Cheng Winston SHEN

Art Unit: 1632

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Number:

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AMENDMENT AND REPLY UNDER 37 CFR 1.116

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This communication is responsive to the Final Office Action dated April 3, 2007, concerning the above-referenced patent application. The response is timely filed within three months from the mailing date of the Final Office Action.

Remarks/Arguments begin on page 2 of this document.

REMARKS

Applicants respectfully request reconsideration of the present application in view of the following commentary.

Applicants thank the Examiner for acknowledging the priority claim and for withdrawing the rejections under 35 U.S.C. §§ 112 and 102.

The Examiner maintained the provisional rejection of claims 7-18 over claims 16-29 of copending Application No. 10/788,410, and the provisional rejection of claims 7-18 over claims 35-39 and 43-46 of copending Application No. 11/097,391, on the grounds of nonstatutory obviousness-type double patenting.

By virtue of the concurrently filed terminal disclaimers against the '410 application, the stated basis for the provisional double patenting rejection over claims 16-29 of the '410 application is obviated.

The present application has a filing date of December 31, 2003, while the '391 application has a filing date of April 4, 2005. Pursuant to MPEP 804, "[i]f a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer..." Accordingly, Applicants respectfully request withdrawal of the provisional double patenting rejection in the present application, which was filed earlier than the co-pending '391 application.

The present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 3 July 2007

By S.A. Bent

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Stephen A. Bent
Attorney for Applicant
Registration No. 29,768

Supplemental Application Data Sheet

Application Information

Application number:: 10/748,233
Filing Date:: 12/31/2003
Application Type:: Regular
Subject Matter:: Utility
Suggested classification::
Suggested Group Art Unit::
CD-ROM or CD-R?:: None
Computer Readable Form (CRF)?:: No
Title:: REPLICATION-COMPETENT HERPES
SIMPLEX VIRUS MEDIATES
DESTRUCTION OF NEOPLASTIC CELLS
Attorney Docket Number:: 066683-0196
Request for Early Publication?:: No
Request for Non-Publication?:: No
Suggested Drawing Figure:: 1
Total Drawing Sheets:: 5
Small Entity?:: Yes
Petition included?:: No
Secrecy Order in Parent Appl.?:: No

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Applicant Information

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Representative Information

Representative Customer Number::	22428	
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Domestic Priority Information

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	Division of	09/625,509	7/25/2000
09/625,509	Division of	09/004,511	1/8/1998
09/004,511	Continuation <u>in-part</u> of	08/478,800	6/7/1995

08/478,800	Division <u>Continuation of</u>	08/264,581	6/23/1994
08/264,581	Continuation in part of	08/486,147	6/7/1995

Foreign Priority Information

Country::	Application number::	Filing Date::	Priority Claimed::

Assignee Information

Assignee Name:: Georgetown University